

CONDITIONAL SETTLEMENT AGREEMENT

This Confidential Conditional Settlement Agreement (“Settlement Agreement”) is made and entered into between Plaintiff Viviana Caza (“Plaintiff”), acting in a private attorney general capacity, and Defendant MVP Pediatric & Urgent Care (“Defendant” or “MVP”) (collectively, the “Parties”).

I. DEFINITIONS

The following terms, when used in this Settlement Agreement, shall have the following meanings:

1. “Action” means the matter entitled *Caza v. MVP Pediatric & Urgent Care*, Los Angeles County Superior Court Case No. 19STCV39594 filed on April 13, 2020 and references Plaintiff’s correspondence to the California Labor and Workforce Development Agency (“LWDA Letter”) dated February 18, 2020.

2. “Complaint” means the Complaint filed in the Action.

3. “Court” means the Superior Court of California for the County of Los Angeles.

4. “Covered Position” means and includes all current and former non-exempt employees who worked for MVP in the State of California from February 18, 2019, through the date of settlement approval.

5. “Gross Settlement Amount” (or the “GSA”) is the sum of Thirty-Two Thousand Five Hundred Dollars and Zero Cents (\$32,500.00), which represents the total amount payable under this Settlement Agreement by MVP, including, without limitation, to be paid by MVP to resolve all PAGA Released Claims by Plaintiff, the California Labor and Workforce Development Agency (“LWDA”), and the Aggrieved Employees.

6. “Individual PAGA Payment” means the amount to be paid to each PAGA Aggrieved Employee out of 25% of the Net Settlement Amount, such individual share to be based on the number of pay periods during which a PAGA Settlement Employee worked for MVP during the PAGA Period.

7. “LWDA” means the California Labor and Workforce Development Agency.

8. “MVP” means defendant MVP Pediatric & Urgent Care and its past, present and future officers, directors, employees, board members, shareholders, attorneys, insurers, reinsurers, customers, partners, investors, members, representatives, predecessors, parent companies, subsidiaries, affiliates, divisions, successors, agents, and principals, and their heirs, estates, executors, administrators, servants, insurers, attorneys, and assigns.

9. “Net Settlement Amount” (or the “NSA”) shall refer to the remainder of the GSA after the following monies are deducted from it: (i) Plaintiff’s Attorneys’ fees; (ii) Plaintiff’s

Attorneys' costs; and (iii) an Enhancement Award in the amount of Two Thousand Five Hundred Dollars and Zero Cents (\$2,500.00) for the PAGA Representative.

10. "PAGA" means the California Labor Code Private Attorneys General Act, California Labor Code section 2698, *et seq.*

11. "PAGA Aggrieved Employees" consist of all individuals in a Covered Position during the PAGA Period, including Plaintiff, estimated to be 41.

12. "PAGA Payment" means the Net Settlement Amount which 75% will be paid to the LWDA, and which 25% will be paid to PAGA Aggrieved Employees. Defendant shall provide a declaration attesting that such distribution has been initiated and processed.

13. "PAGA Period" means the time period from February 18, 2019, through January 25, 2021.

14. "PAGA Released Claims" mean all claims which were asserted in the LWDA Letter, Plaintiff's Complaint, or reasonably could have been asserted in the Action based upon the facts alleged in the LWDA Letter and Plaintiff's Complaint, including, but not limited to, MVP's failure to pay minimum wage in violation of Labor Code sections 1182, 1182.12, 1194, 1197, 1197.1, 1198, and 1199; failure to pay overtime in violation of Labor Code section 510, failure to provide meal periods in violation of Labor Code sections 226.7 and 512; failure to provide rest periods in violation of Labor Code section 226.7; failure to compensate for all hours worked in violation of Labor Code section 204; failure to provide accurate wage statements in violation of Labor Code section 226; failure to maintain payroll records in violation of Labor Code sections 1174 and 1174.5, waiting time penalties in violation of Labor Code sections 201, 202, and 203; failure to timely provide employment records in violation of Labor Code section 1198.5; failure to timely provide pay records in violation of Labor Code section 226; failure to timely pay wages upon termination in violation of Labor Code sections 201 to 203; failure to timely pay wages during employment in violation of Labor Code section 204; and claims relating to these allegations.

15. "PAGA Representative" shall refer to Plaintiff, Viviana Caza.

16. "Parties" mean Plaintiff and Defendant.

17. "Plaintiff's Counsel" means Douglas H. Hoang, Matthew T. Kramer, and K2 Employment Law Group, LLP.

II. RECITALS

1. Plaintiff was performing work in a Covered Position during the PAGA Period for MVP.

2. On February 18, 2020, Plaintiff provided written notice to the LWDA and MVP asserting claims for civil penalties pursuant to PAGA stemming from alleged violations of Labor

Code sections 201, 202, 203, 210, 216, 223, 225.5, 226, 226.3, 226.6, 226.7, 256, 510, 512, 558, 1174, 1194, 1197, 1197.1, 1198, 1199, and 2810.5.

3. On or about September 3, 2020, the parties' agreed that MVP would provide Plaintiff's Counsel with information and documents pertaining to other PAGA Aggrieved Employees in order for Plaintiff's Counsel to investigate Plaintiff's allegations and value the claims prior to mediation.

4. On September 18, 2020, the Parties participated in mediation before mediator Honorable Linda Quinn (ret.). Although the Parties were unable to come to a resolution at the mediation, MVP agreed to subsequently provide additional financial information and documents informally.

5. Between September 24, 2020 and October 7, 2020, Defendant provided Plaintiff's counsel with financial information and documents including 2018/2019/YTD 2020 Income statement, year-end 2019 balance sheet and a balance sheet from July 31, 2020, and 2018/2019 Tax Returns for further review for settlement.

6. On October 26, 2020, the Parties agreed to fully and finally resolve the PAGA Released Claims as to Plaintiff, PAGA Aggrieved Employees, and the LWDA.

III. OPERATIVE TERMS OF SETTLEMENT AGREEMENT

The Parties agree as follows:

1. **Non-Admission.** Nothing in this Settlement Agreement shall be construed to be an admission by MVP of any liability or wrongdoing as to Plaintiff, PAGA Aggrieved Employees, or any other person, and MVP specifically disclaims any such liability or wrongdoing. The Parties have entered into this Settlement Agreement with the intention to avoid further disputes and litigation with the attendant inconvenience, expenses, and risks. This Settlement Agreement and any related court documents or orders are not and may not be cited or admitted as evidence of liability.

2. **Gross Settlement Amount.** MVP shall pay Thirty-Two Thousand Five Hundred and Zero Dollars (\$32,500.00) as the Gross Settlement Amount. MVP will not pay more than the Gross Settlement Amount. The payment of the GSA is non-reversionary, such as the total GSA will be disbursed.

a. MVP shall disburse amounts from the GSA within thirty (30) days after Court approval of the settlement, subject to Court approval, as follows:

i. MVP shall pay to the K2 Employment Law Group, LLC, Trust Account the amount of Thirteen Thousand Dollars and Zero Cents (\$13,000.00) (Forty Percent (40%) of the GSA) as attorneys' fees in prosecuting the PAGA claims in the Complaint; and

ii. MVP shall pay to the K2 Employment Law Group, LLC, Trust Account the amount up to Four Thousand Dollars and Zero Cents (\$4,000.00) as attorneys' costs in prosecuting the PAGA claims in the Complaint; and

iii. MVP shall pay to Plaintiff the amount of Two Thousand Five Dollars and Zero Cents (\$2,500.00) as an Enhancement Award in bringing the PAGA claims in the Complaint.

3. **Net Settlement Amount.** The Parties agree that the following amounts should be distributed to the LWDA and PAGA Aggrieved Employees from the NSA. The PAGA Payment will be subject to Court approval consistent with California Labor Code section 2699.3(b)(4). Upon approval, the PAGA Payment in the estimated amount of \$13,000.00 shall be allocated as follows:

a. 75% - \$9,750.00 will be paid to the LWDA, as required by California Labor Code section 2699(i).

b. 25% - \$3,250.00 will be divided on a pro rata basis among PAGA Aggrieved Employees and distributed in Individual PAGA Payments, as required by California Labor Code section 2699(i).

c. The payments will be reported on IRS Forms 1099 issued to the LWDA and each PAGA Settlement Employee.

4. **Representative PAGA Release.** In her capacity as a private attorney general or "aggrieved employee" acting on behalf of herself, the State of California and PAGA Aggrieved Employees, and in consideration of the PAGA Payment, Plaintiff hereby releases MVP and its past, present, and future officers, directors, employees, board members, shareholders, attorneys, insurers, reinsurers, customers, partners, investors, members, representatives, predecessors, parent companies, subsidiaries, affiliates, divisions, successors, agents, and principals, and their heirs, estates, executors, administrators, servants, insurers, attorneys, and assigns (collectively, the "Released Parties") from any and all PAGA Released Claims that arose during the PAGA Period.

5. **Settled Claims.** Upon entry of the Order approving the settlement, Plaintiff and all PAGA Aggrieved Employees will be forever barred from pursuing any and all claims for PAGA penalties under the California Labor Code, Wage Orders, regulations and/or other provisions of law alleged or could have been alleged were violated in this Action with respect to PAGA Aggrieved Employees based on the facts alleged in the LWDA Letter and Complaint against MVP.

6. **PAGA Released Claims.** Plaintiff agrees that all PAGA Aggrieved Employees will release any and all claims that were asserted in the LWDA Letter and Complaint or could have arisen out of the allegations made in the LWDA Letter and Complaint.

7. **Covenants and Representations by Plaintiff and Plaintiff's Counsel.**

a. Plaintiff represents and warrants that she has not assigned or transferred or purported to assign or transfer to any person or entity, any claim or portion thereof, or interest therein, which is or may be subject to this Settlement Agreement.

a. Plaintiff acknowledges that she has read this Settlement Agreement, that she fully understands her rights, privileges and duties under the Settlement Agreement, and enters into this Settlement Agreement freely and voluntarily. Plaintiff further acknowledges that she has had the opportunity to consult with her attorneys to explain the terms of this Settlement Agreement and the consequences of signing this Settlement Agreement.

8. **Confidentiality.** Except as provided below, to the extent necessary to effectuate the settlement or as required by court or legal process, Plaintiff will keep the terms of this Settlement Agreement confidential. Plaintiff shall not issue a press release, hold a press conference, publish information about the settlement on any website or through any social media or otherwise publicize the settlement or communicate its terms in public or in private, unless ordered by the Court.

To permit judicial review and approval of the PAGA Payment, as required by Labor Code section 2698, *et seq.*, Plaintiff's Counsel may disclose this Agreement to the Court and LWDA.

9. **Filing of Motion for Approval of PAGA Settlement by Plaintiff's Counsel.** Plaintiff's Counsel shall be responsible for preparing the Motion and/or Stipulation for Approval of the PAGA Settlement and providing defense counsel with an opportunity to propose revisions to the Motion and/or Stipulation prior to filing. Plaintiff's Counsel will file the Motion and/or Stipulation, which is mutually agreed to by the Parties, on or before thirty days from the date of the execution of this agreement.

10. **Termination of Settlement Agreement.** If the Court does not approve the settlement, if the Court does not dismiss the Action with prejudice, as provided for in this Settlement Agreement, or if appellate review is sought and, on such review, the Court's decision is materially modified or reversed, or if one or more of the terms of the Settlement Agreement is not approved or is materially modified or reversed or found to be invalid, then MVP shall have the right within twenty (20) days of written notice thereof to elect to terminate the Settlement Agreement, in which case it shall have no force or effect, and the Parties shall be deemed to have reverted to their respective status as of the date and time immediately prior to the execution of this Settlement Agreement.

11. **Dismissal.** No later than 30 days after the settlement is approved by the Court and payment of the Gross Settlement Amount is made by Defendant, Plaintiff's Counsel will file a Request for Dismissal, with prejudice, dismissing the Complaint. The dismissal will be with prejudice. This Settlement Agreement is expressly conditioned upon the Court entering the dismissal of the Complaint in its entirety, with prejudice.

IV. ADMINISTRATION OF SETTLEMENT

1. **Claims Administration.** MVP shall prepare a list of all Aggrieved Employees (“Aggrieved Employees List”). The Aggrieved Employees List shall state the first name and last name in separate columns for each Aggrieved Employee, the last known home address for each such Aggrieved Employee, each Aggrieved Employee’s employee identification number, and each Aggrieved Employee’s respective number of wage statements issued to said employee by Defendant between February 18, 2019, and January 25, 2021. A redacted list with Aggrieved Employees names and last known addresses redacted shall be provided to Plaintiff’s Counsel within fourteen (14) calendar days the settlement is approved by the Court for calculation of the Individual PAGA Payment amounts. Plaintiff’s Counsel shall provide Defendant with the calculations of the Individual PAGA Payment amounts within fourteen (14) calendar days.

2. **Individual PAGA Payments.** No later than ten (10) business days after receipt of the Individual PAGA Payment amounts, Defendant shall mail the Individual PAGA Payments to all Aggrieved Employees by first-class United States mail, postage prepaid, to the last known address of each recipient. Funds represented by checks returned as undeliverable and those checks remaining un-cashed for more than 180 days after issuance will be tendered to the California Department of Industrial Relations Unpaid Wage Fund in the names of PAGA Aggrieved Employees. Each PAGA Payment shall be deemed penalties and reported using IRS Form 1099. All costs incurred in connection with mailing of Individual PAGA Payments shall be paid by Defendant.

3. **Payment to LWDA.** Within 30 days after the Court approves the settlement, Defendant will pay the LWDA 75% of the Net Settlement Amount.

4. **Accounting.** Within 60 days after the Court approves the settlement, Defendant will provide a sworn declaration to the Plaintiff attesting to the fact that the distribution of the Individual PAGA Payments and payment to the LWDA has been initiated and processed.

5. **Tax Consequences.** MVP makes no representations or warranties with respect to tax consequences of any payment under this Settlement Agreement.

V. MISCELLANEOUS PROVISIONS

1. **Drafting.** The Parties agree that the terms and conditions of this Settlement Agreement are the result of lengthy, intensive, arm’s-length negotiations between the Parties and that neither Party shall be considered the “drafter” of this Settlement Agreement for purposes of having terms construed against that Party.

2. **No Impact on Benefit Plans.** Neither the Settlement Agreement nor any amounts paid to Plaintiff or any PAGA Settlement Employee under the settlement will modify any previously credited hours or service under any employee benefit plan, policy or bonus program sponsored by MVP. Such amounts will not form the basis for additional contributions to, benefits under or any other monetary entitlement under MVP’s sponsored benefit plans, policies or bonus programs. The payments made under the terms of this Settlement Agreement shall not

be applied retroactively, currently or on a going-forward basis, as salary, earnings, wages or any other form of compensation for the purposes of any MVP benefit plan, policy, or bonus program. MVP retains the right, if necessary, to modify the language of its benefit plans, policies and bonus programs to effect this intent, and to make clear that any amounts paid pursuant to this Settlement Agreement are not for “hours worked,” “hours paid,” “hours of service,” or any similar measuring term as defined by applicable plans, policies, and bonus programs for purposes of eligibility, vesting, benefit accrual, or any other purpose, and that additional contributions or benefits are not required by this Settlement Agreement.

3. **Successors.** This Settlement Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators and successors.

4. **Costs and Fees.** Nothing in this Agreement, nor the existence of this Agreement, shall be interpreted to render Plaintiff the prevailing party for any purpose. The Parties shall each bear their own costs, attorneys’ fees, and other fees incurred in connection with this Settlement Agreement, the Action, and Plaintiff’s claims, except as otherwise set forth in Paragraph 3 above.

5. **Authority.** Defendant represents and warrants that the undersigned has the authority to act on behalf of MVP and to bind MVP to the terms of this Settlement Agreement. Plaintiff represents and warrants that she has the capacity to act on her own behalf and on behalf of all who might claim through her to bind her to the terms and conditions of this Settlement Agreement.

6. **Governing Law.** This Settlement Agreement shall be construed under and governed by the laws of the State of California. This Settlement Agreement shall be deemed to have been entered into in Los Angeles, California, and all questions of validity, interpretation, or performance of any of its terms or of any rights or obligations of the Parties to this Settlement Agreement shall be governed by California law. If any legal or equitable action or arbitration is necessary to enforce the terms of this Settlement Agreement, it shall be brought in the State of California, County of Los Angeles.

7. **Complete Agreement.** The Parties each acknowledge and represent that no promise or representation not contained in this Settlement Agreement has been made to them, and acknowledge and represent that this Settlement Agreement contains the entire understanding between them and contains all terms and conditions pertaining to the compromise and settlement of the PAGA claim. This Settlement Agreement cannot be amended or modified except by a writing signed by the Parties hereto.

8. **Nullification of Settlement Agreement.** In the event that: (i) the Court does not approve the settlement as provided herein; or (ii) the settlement does not become final for any other reason, then this Settlement Agreement and any documents generated to bring it into effect, will be null and void, and the Parties will be returned to their original respective positions in this litigation.

9. **Judgment and Continued Jurisdiction.** After approval of this settlement, the Court will have continuing jurisdiction solely for purposes of addressing: (i) the interpretation and enforcement of the terms of the settlement, (ii) settlement administration matters, and (iii) such post-Judgment matters as may be appropriate under court rules or as set forth in this Settlement Agreement.

10. **Entire Agreement.** This Settlement Agreement constitutes the entirety of the Parties' settlement terms. No other prior or contemporaneous written or oral agreements may be deemed binding on the Parties.

11. **Amendment or Modification.** This Settlement Agreement may be amended or modified only by a written instrument, signed by either the Parties or their successors-in-interest or counsel for all Parties.

12. **Binding on Successors and Assigns.** This Settlement Agreement will be binding upon, and inure to the benefit of, the successors or assigns of the Parties hereto, as previously defined.

13. **Execution and Counterparts.** This Settlement Agreement is subject only to the execution of all Parties. However, the Settlement Agreement may be executed in one or more counterparts. All executed counterparts, and each of them, including facsimile and scanned copies of the signature page, will be deemed to be one and the same instrument provided that counsel for the Parties will exchange among themselves original signed counterparts.

14. **Acknowledgement that the Settlement is Fair and Reasonable.** The Parties believe this Settlement Agreement is a fair, adequate, and reasonable settlement of the Action, and have arrived at this settlement after arm's-length negotiations by experienced counsel. The Parties further acknowledge that they are each represented by competent counsel and that they have had an opportunity to consult with their counsel regarding the fairness and reasonableness of this settlement.

15. **Invalidity of Any Provision.** Before declaring any provision of this Settlement Agreement invalid, the Court will first attempt to construe the provision as valid to the fullest extent possible consistent with applicable precedents, so as to define all provisions of this Settlement Agreement valid and enforceable.

16. **Severability.** If any term or provision of this Settlement Agreement is held to be invalid or unenforceable, the remaining portions of this Settlement Agreement will continue to be valid and will be performed, construed and enforced to the fullest extent permitted by law, and the invalid or unenforceable term will be deemed amended and limited in accordance with the intent of the Parties, as determined from the face of the Agreement, to the extent necessary to permit the maximum enforceability or validation of the term or provision.

17. **Waiver.** No waiver of any condition or covenant contained in this Settlement Agreement or failure to exercise a right or remedy by any of the Parties hereto will be considered to imply or constitute a further waiver by such Party of the same or any other condition,

covenant, right or remedy.

18. **Enforcement Action.** In the event that one or more of the Parties institutes any legal action or other proceeding against any other Party or Parties to enforce the provisions of this Settlement Agreement or to declare rights and/or obligations under this settlement, the successful Party or Parties will be entitled to recover from the unsuccessful Party or Parties reasonable attorneys' fees and costs, including expert witness fees incurred in connection with any enforcement actions.

19. **Mutual Preparation.** The Parties have had a full opportunity to negotiate the terms and conditions of this Settlement Agreement. Accordingly, this Settlement Agreement will not be construed more strictly against one Party merely by virtue of the fact that it may have been prepared by counsel for one of the Parties, it being recognized that, because of the arm's-length negotiations between the Parties, all Parties have contributed to the preparation of this Settlement Agreement.

20. **Representation by Counsel.** The Parties acknowledge that they have been represented by counsel throughout all negotiations that preceded the execution of this Settlement Agreement, and this Settlement Agreement has been executed with the consent and advice of counsel, and reviewed in full.

21. **Cooperation and Execution of Necessary Documents.** All Parties will cooperate in good faith and execute all documents to the extent reasonably necessary to effectuate the terms of this Settlement Agreement.

22. **Binding Agreement.** The Parties warrant that they understand and have full authority to enter into this settlement, and further intend that this Settlement Agreement will be fully enforceable and binding on all Parties, and agree that it will be admissible and subject to disclosure in any proceeding to enforce its terms, notwithstanding any mediation confidentiality provisions that otherwise might apply under federal or state law.

23. **Denial of Liability.** The Parties expressly recognize that the making of this Settlement Agreement does not in any way constitute an admission or concession of wrongdoing on the part of MVP. Nothing in this settlement, nor any action taken in implementation thereof, nor any statements, discussions or communications, nor any materials prepared, exchanged, issued or used during the course of this Action, is intended by the Parties to, nor will any of the foregoing constitute, be introduced, be used or be admissible in any way in any other judicial, arbitral, administrative, investigative or other forum or proceeding, as evidence of any violation of any federal, state or local law, statute, ordinance, regulation, rule or executive order, or any obligation or duty at law or in equity. Notwithstanding the foregoing, this Settlement Agreement may be used in any Court proceeding that has as its purpose the interpretation, implementation or enforcement of the settlement or any orders or judgments of the Court entered into in connection therewith.

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IN WITNESS THEREOF, the Parties each acknowledge that she/it has read the foregoing Settlement Agreement, accepts and agrees to the provisions contained in this Settlement Agreement, and hereby executes it voluntarily and with full understanding of its consequences.

DATED: December²⁴, 2020

By: 
Viviana Caza (Dec 24, 2020 10:20 PST)

Plaintiff VIVIANA CAZA

DATED: December____, 2020

By: _____
Defendant MVP Pediatric & Urgent Care
By: _____
Its: _____

IN WITNESS THEREOF, the Parties each acknowledge that she/it has read the foregoing Settlement Agreement, accepts and agrees to the provisions contained in this Settlement Agreement, and hereby executes it voluntarily and with full understanding of its consequences.

DATED: December____, 2020

By: _____
Plaintiff VIVIANA CAZA

DATED: December____, 2020

By: _____
Defendant MVP Pediatric & Urgent Care
By: David Epstein, MD
Its: CEO and Medical Director